



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

JRE
Docket No: 7684-99
6 December 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: FORMER [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) 10 U.S.C. 1552

Encl: (1) DD Form 149
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected to show that he was transferred to the Fleet Reserve under the Temporary Early Retirement Authority, and subsequently retired by reason of physical disability.
2. The Board, consisting of Ms. Moidel and Messrs. McCulloch and Rothlein, reviewed Petitioner's allegations of error and injustice on 30 November 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.
3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:
 - a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.
 - b. Enclosure (1) was filed in a timely manner.
 - c. Petitioner reenlisted in the Navy on 14 September 1993. He met the criteria to apply for early retirement under the Fiscal Year 96 TERA program, and submitted a request therefor on 27 December 1994. The request was endorsed favorably by his local chain of command, with a projected retirement date of 1 September 1996. Subsequently, he was evaluated by medical and physical evaluation boards, and found unfit by reason of physical disability rated at 30% disabling. He accepted those findings, and was released from active duty on 15 April 1996, and transferred to the Temporary Disability Retired List the following day. He completed 14 years, 9 months and 25 days of active duty service. His condition was reevaluated by the Physical Evaluation Board on 21 June 1999, and his

disability rating was reduced to 20%. As he had not completed a minimum of twenty years of active duty service, he was discharged by reason of physical disability on 13 August 1999, with entitlement to severance pay.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that had Petitioner been properly advised of his retirement options while undergoing disability evaluation in 1996, he would have requested that he be retained on active duty until he had completed sufficient service to retire under the TERA, vice being released from active duty and transferred to the Temporary Disability Retired List. The Board also concludes that had he made such a request, it is likely that it would have been granted. It notes, however, that had he been transferred to the Fleet Reserve under the TERA, he would have had to forfeit his right to temporary disability retirement, and attendant disability benefits administered by the Department of the Navy. Accordingly, and in view of his many years of outstanding service to the Navy, the Board finds that it would be in the interest of justice to grant the following corrective action.

RECOMMENDATION:

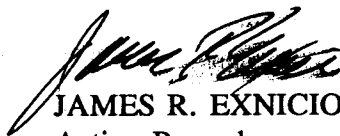
a. That Petitioner's naval record be corrected to show that he was not released from active duty on 15 April 1996, transferred to the TDRL on 16 April 1996 or discharged from the Navy on 13 August 1999; that he was retained on active duty until 31 August 1996; and that he was transferred to the Fleet Reserve pursuant to the Temporary Early Retirement Authority on 1 September 1996.

b. That so much of his request as exceeds the foregoing be and hereby is denied.

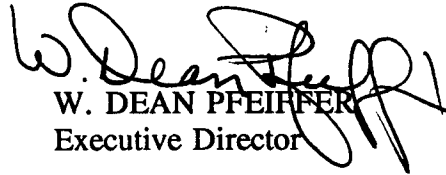
c. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


JAMES R. EXNICIOS
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.


W. DEAN PFEIFFER
Executive Director